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Docket No. 59597-A/JPW/AJM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicants: Neil T. Parkin and Rainer A. Ziermann
Serial No.: 09/591,899 Examiner: S. Foley
Filed : June 12, 2000 Group Art Unit: 1648
For : MEANS AND METHODS FOR MONITORING PROTEASE
INHIBITOR ANTIRETROVIRAL THERAPY AND GUIDING
THERAPEUTIC DECISIONS IN THE TREATMENT OF
HIV/AIDS

1185 Avenue of the Americas
New York, New York 10036
November 1, 2001

Assistant Commissioner for Patents
Washington, D.C. 20231

SIR:

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**COMMUNICATION IN RESPONSE TO MAY 1, 2001 RESTRICTION
REQUIREMENT AND PETITION FOR A FIVE-MONTH EXTENSION OF TIME**

This Communication is submitted in response to the Restriction Requirement issued May 1, 2001 in connection with the above-identified application. A response to the May 1, 2001 Restriction Requirement was originally due June 1, 2001. Applicants hereby request a five-month extension of time from June 1, 2001 to November 1, 2001. The required fee for a five-month extension of time is \$945.00 for a small entity, and a check for this amount is enclosed. Small entity status has previously been established. Accordingly, a response to the May 1, 2001 Office Action is now due November 1, 2001, and this Communication is being timely filed.

In the May 1, 2001 Restriction Requirement, and as confirmed during a May 22, 2001 telephone conference with the Examiner, the Examiner required restriction to one of the following allegedly

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distinct inventions as follows:

Group I, claims 1-12 and 22-70, directed to a method of evaluating a nucleic acid sequence at specific codons; and

Group II, claims 13-21 and 71-79, directed to a method of using a resistance test vector.

The Examiner also required applicants to elect one of the following species, in the event no generic claim is deemed allowable: codon 88, codon 82 and codon 90.

In response, applicants hereby elect with traverse Group I, claims 1-12 and 22-70, for prosecution at this time. Applicants also elect codon 88 as the species for prosecution on the merits should no generic claim be deemed allowable.

Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application. Under M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an application can be made without serious burden.

The inventions of Groups I and II are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the inventions claimed. The inventions of Groups I and II relate to assessing a drug's anti-HIV efficacy based on the specific nature of the HIV infection. Applicants therefore maintain that the Groups are not independent and restriction is not proper.

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Furthermore, under M.P.E.P. § 803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction is not required.

Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to any of the claims of Group II would necessarily turn up prior art relevant to the claims of Group I, and vice versa. Since there is no serious burden on the Examiner to examine Groups I and II together in the subject application, the Examiner must examine the entire application on the merits.

In view of the foregoing, applicants maintain that restriction is not proper under 35 U.S.C. §121 and respectfully request that the Examiner reconsider and withdraw the requirement for restriction.

No fee, other than the enclosed \$945.00 fee for a five-month extension of time, is deemed necessary in connection with the

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filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

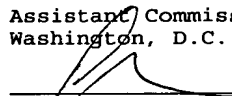
Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Washington, D.C. 20231.


Alan J. Morrison
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11/1/07
Date